HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.56 of 2002

Surendra Kumar Juneja
S/o Harbansh Lal Juneja
R/o Shivaji Transport Galla Mandi
Rudrapur
District U. S. Nagar ……Applicant

Versus

1. State of Uttaranchal
2. M/s Pal Credits (E) Ltd.
   Bareilly Road Haldwani
   P.S. Haldwani Nainital
   Through its Manager
   Vijay Pal S/o Sri N. K. Pal .…….Respondents

Date:- 01st August, 2005

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the orders dated 29.1.2002 and 26.3.20052 passed by Addl. Chief Judicial Magistrate, Haldwani and Chief Judicial Magistrate, Haldwani respectively.

2. Heard Sri S. K. Mandal learned counsel for the applicant and learned A.G.A.

3. Perusal of the record reveals that the respondent No.2 filed a complaint before the Addl. Chief Judicial Magistrate, Haldwani under section 138 Negotiable Instrument Act and the same was registered as complaint case No.1241/2002. Thereafter, the accused-applicant was summoned under section 138 Negotiable Instrument Act. The applicant filed certain representations against the summoning order and the said representations were taken up for disposal on 24.3.1999, but none was present from the side of the accused-applicant and the application was rejected and the non-bailable warrant was issued against the accused-applicant. On 29.1.2002 the Addl. Chief

Judicial Magistrate, Haldwani dismissed the objection filed by the applicant for want of prosecution. Feeling aggrieved by this, the applicant preferred a recall application before the Chief Judicial Magistrate and the same was rejected vide dated 26.3.2002. Feeling aggrieved, the applicant preferred this petition before this Court.

4. In view of the decisions of the Hon'ble Supreme Court in **Adalat Prasad 2004(7) SCC p/338 and Subramanium Sethuraman Vs. State of Maharashtra 2005 SCC(Cri) p/242,** the cognizance order cannot be challenged before the trial court and trial court has got no jurisdiction to recall the order, which was already passed by him. In the aforesaid decision, it has beben held that the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under section 482 Cr.P.C. and not by way of an application to recall the summons or to seek discharge which is not contemplated in the trial of a summons case.

5. The only remedy for the applicant is to challenge the cognizance order under section 482 Cr.P.C. The review or recall was not maintainable before the court below. The applicant may take the grounds, which have been alleged in the recall application during the trial.

Therefore, the petition is devoid of merit and it dismissed accordingly.

(J. C. S. Rawat, J.)

Dated 01.8.2005

LSR